

Decision **DRAFT DECISION OF ALJ COOKE** (Mailed 9/10/2002)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of PACIFIC GAS AND ELECTRIC  
COMPANY (U 39 E) for a Certificate of Public  
Convenience and Necessity Authorizing the  
Construction of the Tri Valley 2002 Capacity  
Increase Project.

Application 99-11-025  
(Filed November 22, 1999)

**OPINION AWARDING COMPENSATION**

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## OPINION AWARDING COMPENSATION

This decision awards Kottinger Ranch Homeowners Association (KRHA) \$498,413.43 in compensation for its contribution to Decision (D.) 01-10-029. The award is reduced for modifications to hourly rates, duplication with the City of Pleasanton, and unproductive effort on certain issues.

### 1. Background

D.01-10-029 granted a certificate of public convenience and necessity (CPCN) to Pacific Gas and Electric Company (PG&E) to construct 14.3 miles of new 230 kilovolt (kV) double-circuit transmission line, upgrade certain other transmission facilities, and construct two transmission/distribution substations to serve the Dublin and North Livermore areas. Part of the PG&E proposed transmission project to serve the Pleasanton area was located in the neighborhood known as Kottinger Ranch. The approved project is not located in Kottinger Ranch.

Several parties intervened and participated actively during the evidentiary hearings and subsequent briefing. The City of Pleasanton and the Kottinger Ranch Homeowners Association coordinated their efforts and submitted testimony and briefing jointly. Throughout the text of D.01-10-029, their positions are referred to as the Pleasanton Parties.<sup>1</sup>

On December 10, 2001, KRHA filed its request for compensation. KRHA served errata on December 14, 2001. PG&E filed an objection to KRHA's claim on January 8, 2002. The City of Pleasanton and KRHA filed individual responses

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<sup>1</sup> Where KRHA and the City of Pleasanton participated jointly, we will refer to their position as the Pleasanton Parties. Where a position was advanced by only one of these parties, we will refer to KRHA or the City of Pleasanton individually.

on January 23, 2002. KRHA served errata on January 28, 2002. On February 4, 2002, the assigned Administrative Law Judge (ALJ) requested that KRHA provide certain information to augment its claim. KRHA served that information on parties electronically as directed by the ALJ on February 7, 2002.<sup>2</sup>

## **2. Eligibility Requirements**

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. (All statutory citations are to Public Utilities Code.) Section 1802(b) requires an intervenor to be a “customer,” as defined in the statute, in order to be eligible for compensation.<sup>3</sup> Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days of the prehearing conference or by a date established by the Commission. The NOI must present information regarding the nature and extent of the customer’s planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility, based on a showing that the customer’s participation, without compensation, would impose a significant financial hardship.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an intervenor requesting compensation to provide “a detailed description of services and expenditures

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<sup>2</sup> The errata and the February 7, 2002 augmentation were placed in the correspondence file in Central Files.

<sup>3</sup> The statute uses “intervenor” and “customer” interchangeably, as does today’s decision.

and a description of the customer's substantial contribution to the hearing or proceeding."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with Section 1806.

By a ruling dated June 16, 2000, KRHA timely filed its NOI. The assigned ALJ found KRHA to be a customer under Section 1802(b). In addition, the assigned ALJ found KRHA had demonstrated significant financial hardship under both Category 1 and Category 3 customer definitions.

Section 1804(c) provides that a request for award of compensation must be filed within 60 days following issuance of a final order or decision by the Commission. KRHA filed its compensation request on December 10, 2001, which is 61 days following the issuance of D.01-10-029. However, the 60<sup>th</sup> day fell on December 9, 2001, a Sunday, and therefore the filing is considered timely.

### **3. Contribution to Resolution of Issues/Overall Benefits of Participation**

#### **3.1. Requirements**

Under Pub. Util. Code § 1802(h), a party may make a substantial contribution to a decision in one of several ways. It may offer a factual or legal contention upon which the Commission relied in making a decision, or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a

party's position in total. The Commission has provided compensation even when the position advanced by the intervenor is rejected.<sup>4</sup>

In addition, in D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was "productive," as that term is used in Section 1801.3, where the Legislature gave the Commission guidance on program administration. (See D.98-04-059, mimeo. at 31-33, and Finding of Fact 42.) In that decision we discuss the fact that participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

### **3.2. KRHA Contributions**

KRHA participated actively in all phases of this proceeding as a joint party with the City of Pleasanton. As described in KRHA's Request, page 3, "Kottinger Ranch participated in scoping meetings, proposed alternative routes for evaluation and consideration, conducted discovery, prepared testimony, cross-examined witnesses, presented closing argument and filed briefs and comments on the proposed and alternate decisions." We discuss KRHA's contributions on specific issues below.

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<sup>4</sup> D.89-03-96 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

### **3.2.0. Environmental Review**

Pleasanton Parties opposed PG&E's Proposed Route for the southern portion of the project in the vicinity of Pleasanton, as did the Livermore Area Recreation and Park District (LARPD). However, the Pleasanton Parties focused on different portions of the route than LARPD. Pleasanton Parties identified alternatives to PG&E's Proposed Route in the Commission's environmental review process. Some of the alternatives proposed by the Pleasanton Parties were considered in the final environmental impact report (FEIR), although others were not considered feasible alternatives and therefore were not considered in the CPCN decision. Overall, the Pleasanton Parties made a significant contribution to the Commission's environmental review of PG&E's Proposed Route.

#### **3.2.1. Routing**

Since no party contested the need for the southern portion of PG&E's proposed Tri Valley 2002 Project, parties concerned with the southern portion of the project concentrated their efforts exclusively on routing—whether PG&E's Proposed Route or an alternative route best meets the requirements of public convenience and necessity. Pleasanton Parties opposed PG&E's Proposed Route and urged the Commission instead to approve one of several alternatives. Pleasanton Parties identified alternative routes for Commission consideration, filed testimony by local residents and experts on numerous issues pertaining to route selection, cross-examined witnesses, filed briefs, filed comments on the Proposed Decision and Alternate Proposed Decision, and participated in closing argument.

In D.01-10-029, the Commission rejected PG&E's Proposed Route, as the Pleasanton Parties had advocated. While the Commission did not adopt the Pleasanton Parties' preferred route, as described by KRHA, "there is



no question that Kottinger Ranch's evidence and advocacy forced PG&E to more thoroughly explain the design and engineering assumptions underlying its Proposed Route and through advocacy of alternatives, permitted the Commission to reach a much more informed conclusion regarding the route most consistent with public convenience and necessity." (KRHA Request, p. 8.)

PG&E argued that its Proposed Route was the only feasible route for the southern portion of the project. The Commission adopted the Pleasanton Parties' position that alternatives to PG&E's Proposed Route were available and could be built in roughly the same time frame as PG&E's Proposed Route. The Pleasanton Parties were not unique in addressing timing issues (LARPD also addressed timing), but the Pleasanton Parties focused on construction challenges of the various routes and introduced unique testimony and cross-examination demonstrating that, in analyzing the construction timing of the alternatives, the Commission needed to look at the difficulty of the terrain on each route to be constructed. Pleasanton Parties pointed out that PG&E's Proposed Route would require deep trenching, extensive shoring, and hand digging in narrow residential streets full of pre-existing underground utilities. As a result, D.01-10-029 found that "[C]onstruction of PG&E's proposed underground project does present challenges due to the narrow streets, existing utility conflicts, and depth of trench." (D.01-10-029 at 63.) In addition, the Commission concluded that "each route has tradeoffs with respect to difficulty of construction. Judging how long construction will take based on simply reviewing the length of underground construction as proposed by PG&E is not appropriate. We conclude that each of the alternatives studied by the FEIR for the Pleasanton area can be constructed in the same general timeframe as PG&E's proposed project and thus should be evaluated on their merits." (D.01-10-029 at 61.)

In D.01-10-029, the Commission considered numerous environmental issues in determining which route was most consistent with public convenience and necessity. Pleasanton Parties' testimony, cross-examination, briefs, and comments addressed each of these issues and clearly contributed to the Commission's evaluation of how these factors affected the relative merits of PG&E's Proposed Route and the various alternative routes.

Pleasanton Parties evaluated the impacts on residential areas along both PG&E's Proposed Route and alternative routes. Pleasanton Parties noted that the S2A/S2 Route, while still impacting residents, would have less significant impacts than PG&E's Proposed Route because the S2A/S2 Route would utilize larger streets. (See *Pleasanton Parties Opening Brief* at 65-68.) The Commission agreed and adopted this same line of reasoning in reaching its conclusions respecting land use impacts and impacts on residential areas. (See D.01-10-029 at 121-125.)

Pleasanton Parties also addressed the adverse impacts of heavy underground construction within residential neighborhoods and in residential streets. The Commission acknowledged and took this factor into account in rejecting PG&E's Proposed Route. (See D.01-10-29 at 121-124.)

Pleasanton Parties also evaluated Electric and Magnetic Field (EMF) impacts and demonstrated through cross-examination that PG&E did not consider EMF impacts in its selection of its Proposed Route. Pleasanton Parties demonstrated that PG&E's EMF impact calculations assumed the transmission line would be located in the middle of the street despite the underground utility conflicts. The Commission acknowledged this factor in rejecting PG&E's Proposed Route. "PG&E's proposed project in Pleasanton is located in relatively narrow residential streets with limitations on where it can be placed due to existing utilities, [therefore] the possibilities for higher exposure levels are

greater than on other underground alternatives.” (D.01-10-029 at 98-99. See also, *Id.*, discussion at 124.) We find that a substantial contribution was made on this topic.

Pleasanton Parties also showed that PG&E had no prior experience with 230 kV solid dielectric underground transmission cable prior to undertaking this project and argued that it is inappropriate to use a project route such as PG&E’s Proposed Route, through residential streets, for PG&E’s first such project. (See *Pleasanton Parties Opening Brief* at 18-20.) The Commission cited this factor as one of the reasons for rejecting PG&E’s Proposed Route. (D.01-10-029 at 123, 124.)

### **3.2.2. Cost of Alternatives**

Pleasanton Parties, the Office of Ratepayer Advocates (ORA), and Foley Intervenors all presented evidence on PG&E’s overstatement of costs to construct the various alternatives. For example, the Pleasanton Parties showed that PG&E assumed the same per unit construction cost for each alternative route when in fact there were several aspects of the Proposed Route that would make construction more difficult and costly than the alternatives. These factors include the steep hills, narrow residential streets filled with underground utilities, trenching up to 17 feet deep, additional shoring, and hand digging. The Commission agreed. (See D.01-10-029 at 106.)

Pleasanton Parties also showed that PG&E included in its cost estimates amounts for what is described as “ED Contingency,” in addition to other contingency amounts, without explaining why any such additional contingency is required. (See *Pleasanton Parties Comments on PG&E Cost Information* at 3.) The Commission agreed with this point as well and removed the “ED contingency” stating that “. . . PG&E included not just one contingency

allocation for land costs, but two [ ]” and that “[t]his double assessment of contingency costs is clear from a review of PG&E’s June 4, 2001 Cost Information Filing and Exhibits C307 and C17.” (D.01-10-029 at 114 and footnote 48.)

### **3.2.3. Community Values**

Incompatibility of PG&E’s Proposed Route with community values in the Pleasanton area was the cornerstone of the Pleasanton Parties’ intervention and participation in this proceeding. In D.01-10-029, the Commission agreed with the Pleasanton Parties that PG&E’s Proposed Route was inconsistent with these community values. The Commission stated “[i]n this case we have carefully examined the concerns expressed by residents and local leaders regarding siting of high voltage transmission lines and/or substations in their communities . . . . we have eliminated . . . PG&E’s proposed project in Pleasanton, largely based on concerns over impacts to residential neighborhoods.” (D.01-10-029 at 130-131.)

### **3.2.4. Applicability and Effect of Section 625**

Pub. Util. Code § 625 requires additional process and procedure when a utility seeks to acquire property that may be used for providing competitive services. Pleasanton Parties showed that PG&E’s project design includes an underground duct bank containing a number of conduits, with capacity well in excess of PG&E’s own requirements. Pleasanton Parties also showed that not only would PG&E have the ability to lease these excess conduits to telecommunication companies for fiber optic cable, but also that it is common practice for PG&E to do so. As a result, the Pleasanton Parties demonstrated that it is not only possible but likely that the proposed project will be used, in part, for competitive services and thus that acquisition of property rights necessary for PG&E to construct the project on its Proposed Route would

be subject to Pub. Util. Code § 625 requirements. (See *Pleasanton Parties Opening Brief* at 35-36.) In D.01-10-029, the Commission agreed, stating, “. . . we conclude that PG&E’s past practice indicates that it will likely lease out excess capacity for competitive purposes. Therefore, Pub. Util. Code § 625 is applicable to an electric transmission project that is designed to serve an electric demand, but could carry a competitive fiber/telco component.” (D.01-10-029 at 134.)

### **3.2.5. Removal of 60 kV line**

Pleasanton Parties advocated the removal of PG&E’s existing 60 kV line along Vineyard Avenue, citing to the FEIR’s conclusion that the 60 kV line will not be required to serve the Vineyard Substation after a new 230 kV transmission line is built in Pleasanton. (See *Pleasanton Parties Opening Brief* at 68.) The Commission in D.01-10-029 agreed and stated that “[a]s a condition of our authorization, we direct PG&E to remove the portions of the existing 60 kV line between Tesla-Newark and Vineyard Substation that are no longer needed to serve Iuka Substation once the Pleasanton area project is operational.” (D.01-10-029 at 140.)

### **3.3. Benefits of Participation**

It is difficult to assign specific ratepayer savings to the Pleasanton Parties’ contributions in this proceeding because their participation focused primarily on the most appropriate route for the project in light of a wide range of factors rather than on ratemaking matters. Nonetheless, the Commission and ratepayers have benefited from the Pleasanton Parties’ participation. This proceeding was the first time PG&E proposed to construct a 230 kV transmission line underground in a residential neighborhood. Pleasanton Parties developed a policy framework, which they recommended the Commission utilize in evaluating where transmission lines should be sited. Although we did not adopt

the framework recommended, we articulated how we were balancing the specific facts of this case against the proposed framework in reaching our conclusion that the adopted route was in the public interest. The decision clearly articulates how we balanced the competing interests in a difficult siting case. Although KRHA and the City of Pleasanton clearly represented a local, rather than statewide, interest, the issues they identified and developed in this case are relevant to transmission siting cases statewide.

As a result of the Pleasanton Parties' help in developing a full record, the Commission rejected PG&E's Proposed Route in favor of a superior route. Furthermore, the Pleasanton Parties made a substantial contribution to the Commission's consideration of alternative routes for PG&E's proposed Tri Valley 2002 project and to its ultimate choice of one of those routes.

D.98-04-059 states that "participation must be productive in the sense the costs of participation should bear a reasonable relationship to the benefits realized through such participation." The route adopted to serve the Pleasanton area is easier to construct because of its location and terrain than the route proposed by PG&E. The adopted route promotes more rapid construction of the transmission project to meet the clear transmission need in the Tri Valley Area. Also, quicker construction of this part of the project benefits PG&E's ratepayers and the state through improved reliability of the transmission system. Pleasanton Parties' participation in this proceeding, although impossible to quantify in monetary terms, has been productive within the meaning of D.98-04-059.

### **3.4. Summary**

While the route certified was not KRHA's preferred route, the key factors the Commission cited as grounds for rejecting PG&E's Proposed Route

and adopting the S2A/S2 Route were factors that the Pleasanton Parties were instrumental in bringing to the Commission's attention and ensuring a full evaluation. Accordingly, KRHA's overall participation, in conjunction with the City of Pleasanton, made a substantial contribution to the Commission's analysis of siting this high voltage transmission line and to its ultimate decision in this proceeding. We agree that the Pleasanton Parties' participation in this proceeding complemented and supplemented the efforts of ORA, LARPD, and the Foley Intervenors, but did not in any material way duplicate ORA, LARPD, or the Foley Intervenor's participation. However, because KRHA participated jointly with the City of Pleasanton, we must further review the joint and separable efforts of these two parties.

#### **4. Distinguishing KRHA's Contribution From the City of Pleasanton**

KRHA states that it worked with the City of Pleasanton to coordinate its participation and divide responsibility for work tasks where it shared interests in common with the City of Pleasanton. KRHA believes that close collaboration kept duplication of effort to a minimum. Pleasanton Parties' collaborative efforts included coordination of expert analysis, filing joint testimony, briefs, and comments as well as dividing responsibility for cross-examination and preparation of briefs. KRHA believes this effort reduced the costs both parties incurred for participating in this proceeding and allowed KRHA to materially complement and supplement the participation of the City of Pleasanton in almost every respect, entitling KRHA to full compensation under Pub. Util. Code § 1802.5. KRHA has voluntarily reduced its compensation request to disallow ten percent of its hours devoted to consideration of alternative routes, recognizing there is some possibility that duplication did occur with the City of Pleasanton.

The assigned ALJ sought additional information from KRHA regarding the division of responsibility for work tasks and work products between KRHA and the City of Pleasanton. In its February 7, 2002 augmentation, KRHA provided additional clarification and identified which party was responsible for each witness, cross-examination, and drafting of various pleadings. For example, KRHA indicates that in the joint opening brief, KRHA was responsible for the initial draft, except for the sections related to eminent domain, § 625 applicability (although KRHA did assist with research on this topic), and community values, which were drafted by the City of Pleasanton. For the reply brief, KRHA also handled most of the drafting, except for the section on costs, which was drafted by the City of Pleasanton. As a general rule, it appears that the City of Pleasanton was the lead advocate on issues surrounding community values and cost issues.

Based on this allocation of responsibilities, we would expect that KRHA would have limited hours allocated to these subjects, compared to other issues addressed in the case. We see that this is the case for the topic of community values, where KRHA identifies less than 84 hours for this topic over the course of the proceeding. However, despite its close collaboration with the City of Pleasanton, and the fact that the City of Pleasanton took the lead on cost issues, KRHA identifies more than 305 hours of attorney and consultant time associated with various cost issues. (See KRHA Request, p. 23.) This amount of time is excessive given the responsibilities and allocation of tasks between KRHA and the City of Pleasanton. We will reduce by 50% the number of hours allowed related to “Construction Cost” and “Land Cost” as described below in the “Hours Claimed” section. Reducing the amount of hours when duplication occurred addresses the duplication concerns raised by PG&E.



KRHA allocated 84.1 hours of attorney time and 32.1 hours of expert time to the issue of “Visual Impacts.” According to the February 7, 2002 augmentation, KRHA performed this work during the environmental review process, in testimony, cross-examination, evidentiary hearings, opening and reply briefs and comments on the proposed decision. We have reviewed the record and find that this level of hours is excessive given the showing by the Pleasanton Parties in testimony, briefs and comments and their limited contribution on this issue. Therefore, we reduce the hours related to “Visual Impacts” by 50%.

KRHA also allocated over 688 hours to the subject “Routing of Transmission Line and Alternatives”.<sup>5</sup> PG&E points out in its opposition that the Pleasanton Parties spent a significant amount of time in testimony and briefs advocating the “Improved Isabel-Stanley” route which was rejected in the FEIR as infeasible and mentioned only briefly in D.01-10-027. PG&E argues that time associated with advocating for this route should be removed as unproductive and not making a substantial contribution. Because of KRHA’s allocation approach, it is difficult to determine how much of its effort was associated with advocacy of this route. While some time spent on this route and other routes that were determined to be infeasible is allowable because it resulted in a rigorous set of alternatives, once the Draft Environmental Impact Report and FEIR rejected this alternative, KRHA’s time spent advocating that route was clearly no longer productive. Based on a review of the time records, a reduction of 15% of hours allocated to the general topic of routing is appropriate to reflect

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<sup>5</sup> KRHA voluntarily reduces this amount by 10% to account for the possibility of duplication.

this unproductive effort. In addition, we adopt the 10% reduction for duplication on routing issues, resulting in an overall reduction of 25% of the time allocated to this issue. This reduction addresses PG&E's concern regarding time spent by KRHA on the Improved Isabel-Stanley route.

The need for a transmission project to serve the Pleasanton area was not in dispute. In fact, KRHA states in its request that it focused its participation "entirely upon PG&E's Proposed Route, alternative routes, and issues and concerns bearing upon the feasibility, advantages and disadvantages of the different routes under construction." (KRHA Request, p. 7.) As a result, KRHA's allocation of 36 hours of attorney time to this issue seems unnecessary. We will remove five hours each from the hours claimed in 2001 by attorneys O'Neill, Hilen, and Beeson, to reflect this unproductive effort.

## 5. Reasonableness of Requested Compensation

KRHA requests an award of \$638,562.53<sup>6</sup> as follows:

Attorneys	year	rate	hours	total
O'Neill	2000	\$ 295.00	18.2	\$ 5,369.00
O'Neill	2001	\$ 315.00	363.2	\$ 114,408.00
Hilen	1999	\$ 275.00	20.0	\$ 5,500.00
Hilen	2000	\$ 275.00	455.0	\$ 125,125.00
Hilen	2001	\$ 285.00	526.9	\$ 150,166.50
Beeson	2000	\$ 175.00	12.9	\$ 2,257.50
Beeson	2001	\$ 195.00	426.0	\$ 83,070.00
Bober	2000	\$ 210.00	17.7	\$ 3,717.00
subtotal				\$ 489,613.00
Attorney Intervenor Compensation and Travel Time				
O'Neill	2000	\$ 147.50	2.2	\$ 324.50
O'Neill	2001	\$ 157.50	40.2	\$ 6,331.50
Hilen	1999	\$ 137.50	1.0	\$ 137.50
Hilen	2000	\$ 137.50	29.0	\$ 3,987.50
Hilen	2001	\$ 142.50	32.5	\$ 4,631.25
Beeson	2001	\$ 97.50	108.0	\$ 10,530.00

<sup>6</sup> By our calculation, the request comes to \$638,399.53, not \$638,562.53.

				subtotal	\$ 25,942.25
				Attorney Time subtotal	\$ 515,555.25
<b>Paralegals</b>	year	rate	hours	total	
Pau	2000	\$ 120.00	2.7	\$	324.00
Pau	2001	\$ 130.00	28.1	\$	3,653.00
Oxsen	2000	\$ 120.00	1.0	\$	120.00
Oxsen	2001	\$ 130.00	10.8	\$	1,404.00
Nielsen	2001	\$ 130.00	46.8	\$	6,084.00
				subtotal	\$ 11,585.00

## Paralegals Intervenor Compensation and Travel Time

Pau	2001	\$ 65.00	6.8	\$	442.00
Nielsen	2001	\$ 65.00	1.3	\$	84.50
				subtotal	\$ 526.50
				Paralegal Time subtotal	\$ 12,111.50
				Attorney/Paralegal time	\$ 527,666.75

**Experts**

Sage, C	2000, 2001	\$ 180.00	211.0	\$	37,980.00
Sage, O	2000, 2001	\$ 180.00	39.6	\$	7,128.00
Boothe	1999	\$ 275.00	19.5	\$	5,362.50
Boothe	2000	\$ 275.00	58.6	\$	16,115.00
Confidential		\$ 200.00	47.1	\$	9,420.00
				Expert time	\$ 76,005.50

Copying	In house	\$ 5,670.55		
	outside	\$12,752.93		
	Subtotal	\$18,423.48		
Research	Lexis-Nexis	\$ 3,489.57		
	Westlaw	\$ 1,308.79		
	Subtotal	\$ 4,798.36		
Legal Services		\$ 2,873.80		
Court Reporting		\$ 2,038.00		
Delivery	Messenger	\$ 831.86		
	FedEx	\$ 588.35		
	Subtotal	\$ 1,420.21		
Telecommunications	Phone	\$ 2,813.13		
	Conferencing	\$ 360.96		
	Fax	\$ 576.50		
		Subtotal	\$ 3,750.59	
Travel		\$ 1,348.84		
Parking		\$ 74.00		
		Subtotal	\$34,727.28	
			Total	\$ 638,399.53

## **5.1. Hourly Rates**

KRHA asks us to adopt hourly rates for its attorneys, experts, and paralegals as part of its request for compensation. We have not adopted rates for any of the attorneys, experts, or paralegals KRHA seeks compensation for. We address the requested hourly rates for each attorney, expert, and paralegal in turn.

### **5.1.0. Attorneys**

#### **5.1.0.1. O'Neill**

KRHA asks the Commission to adopt a 2000 billing rate of \$295/hour and a 2001 billing rate of \$315/hour for attorney Edward W. O'Neill. O'Neill is a partner at Davis Wright Tremaine. O'Neill is a 1976 Boston College Law School graduate with over 24 years of energy and regulatory experience. Prior to entering private practice, O'Neill was employed by this Commission as an assistant general counsel. O'Neill also served as an ALJ, Commissioner Legal Advisor, and staff counsel. The experience described places O'Neill in the most experienced tier of practitioners appearing before the Commission.

To justify the proposed billing rates for O'Neill, KRHA discusses billing rates for other Commission practitioners for whom we have adopted hourly rates and also submits a summary of billing rates reported in *Of Counsel* (November 2000). Based on these data, KRHA states that excluding outliers, the average billing rate for California partners is \$354/hour. KRHA argues that given his experience, the rates request by O'Neill for 2000 and 2001 are reasonable in comparison to market rates and similarly experienced practitioners at the Commission. We agree and set O'Neill's hourly rate for work in this proceeding at \$295/hour for 2000 and \$315/hour for 2001.

**5.1.0.2. Hilén**

KRHA requests an hourly rate for Christopher A. Hilén for 1999 and 2000 of \$275 and a 2001 rate of \$285. Hilén is an attorney with Le Boeuf, Lamb, Green & Mac Rae, L.L.P.<sup>7</sup> with 10 years of energy and regulatory experience. Hilén graduated from the University of California, Hastings College of the Law in 1989 and clerked for the Honorable Lynn N. Hughes of the U.S. District Court for the Southern District of Texas before joining LeBoeuf. KRHA argues that Hilén should be considered a junior partner commanding in the range of \$276-328/hour based on the *Of Counsel* data. KRHA compares Hilén to attorney Savage of Public Advocates who is also a 1989 law school graduate and who received \$275/hour for work in 1999 and 2000. We agree that this comparison is appropriate and approve this rate for Hilén's work in 1999 and 2000. KRHA does not explain how it arrived at a rate for Hilén's work in 2001, but we agree that an increase of \$10/hour is appropriate to reflect his additional experience.

**5.1.0.3 Beeson**

KRHA requests compensation for time spent by Mylie A. Beeson of Davis Wright Tremaine at an hourly rate of \$175 in 2000, and \$195 in 2001. Beeson joined Davis Wright Tremaine in December 2000. She attended Suffolk University Law School in Boston, graduating in 1998, and was admitted to the Massachusetts and Maryland Bars. At the time of her work in this proceeding, she had not been admitted to the California Bar. Between 1998

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<sup>7</sup> KRHA represents that LeBoeuf charges clients a commercial rate higher than the rate requested for Hilén in 1999, 2000 or 2001, and the rate requested for Boothe in 1999 or 2000.

and December 2000, Beeson represented various parties before the Federal Energy Regulatory Commission and in the United States Court of Appeals for the District of Columbia.

To justify its requested hourly rates for Beeson, KRHA presents a summary of associate billing rates from the November 2000 *Of Counsel*. The data show that, excluding outliers, the average low-end associate rate is \$158/hour, with an average high-end rate of \$253/hour. KRHA further breaks the rates into three categories, entry-level, mid-level, and senior associates. KRHA argues that Beeson should be considered a mid-level associate commanding \$191-\$222/hour because of her four years of practice.

Beeson's work in this proceeding occurred primarily in 2001. At the time she began work on this proceeding she had practiced for approximately 2½ years and had not been admitted to the California Bar. KRHA argues that based on her experience, Beeson should be compared to attorney Stein from The Utility Reform Network (TURN). Although her prior practice experience is related to utility regulation and she is admitted in other states, for the time period in question, Beeson was operating at a level more comparable to an entry-level attorney. Unlike Stein, who took a lead role in presenting and arguing TURN's cases before the Commission, Beeson did not take a lead position or appear before the Commission. Given her level of experience, role in the case, and prevailing market rates for persons of similar qualifications, a rate of \$175 for Beeson's work in both 2000 and 2001 is appropriate.

#### **5.1.0.4. Bober**

KRHA requests compensation for the work performed by Leanne M. Bober in 2000 at \$210/hour. Bober joined Davis Wright Tremaine as an associate in May 2000. Bober holds a 1996 J.D. from George

Washington University School of Law, was admitted to the California Bar in 2000, and represented clients before the Federal Energy Regulatory Commission between 1996 and May 2000. KRHA submits that Bober should be considered a mid-level associate given her five years of energy regulatory practice. At the time of her brief participation in this case, Bober had 4½ years of experience. We agree that this warrants compensation as a mid-level associate. Based on a comparison with other practitioners at that level (for example during the year 2000, Stein was in his fourth year of practice and was compensated at a rate of \$200/hour) an hourly rate of \$210 for Bober's work in 2000 is appropriate.

#### **5.1.1. Experts**

##### **5.1.1.1. Boothe**

KRHA seeks an hourly rate in 1999 and 2000 of \$275 for economist James Boothe, from Le Beouf, Lamb, Green & Mac Rae, L.L.P. Boothe graduated from the University of Virginia with a B.S. in Commerce in 1976. He earned an M.B.A. at the University of Miami in 1977, and a Ph.D. in Economics from the University of California, Santa Barbara in 1989. Boothe has taught economics courses at the University of California, Santa Barbara and Mills College. Prior to his work for Le Beouf, Boothe was employed by the Commission as Commissioner advisor and a regulatory analyst. KRHA states that Boothe's experience is similar to that of TURN's expert Terry Murray, who was recently authorized a rate of \$300/hour. Boothe did not testify or appear before the Commission in this case.

In evaluating the proper hourly rate, we look to the experience of a particular expert, relevant market rate data, and the rates awarded to peers practicing before the Commission. Here, KRHA points us only to one other expert appearing before us and provides no other comparative

market data to evaluate Boothe's rate. Unlike Murray, who served as the lead expert for TURN in the proceeding for which her rate was set at \$300/hour, Boothe served primarily in a research role in this proceeding; he did not prepare testimony or appear before the Commission. In addition, in seeking a rate for Murray of \$300/hour, TURN argued that demand for telecommunications experts was high following the passage of the Telecommunications Act of 1996, resulting in a higher market rate for telecommunications experts. We found this argument significant when we set Murray's rate at \$300/hour in D.01-08-010 for work performed in 1998 and 1999. KRHA makes no such argument in seeking to establish an hourly rate for Boothe, who focuses on the energy sector.

Boothe's credentials are more similar to TURN's expert William Marcus or Aglet Consumer Alliance's Director James Weil. Marcus holds a Masters in Economics, 1975, from the University of Toronto, rather than a Ph.D. like Boothe, but Marcus has worked in the utility sector since 1978 while Boothe has been in the industry since 1986. Weil holds a 1972 Ph.D. in Engineering from University of California, Berkeley and worked at the Commission as an ALJ, Commissioner advisor, and engineer for 14 years, compared to Boothe's 11 years at the Commission. In 1999 and 2000, Marcus commanded rates of \$150/hour and \$160/hour, respectively; in 1999 and 2000, Weil commanded rates of \$200/hour and \$220/hour, respectively. Given Boothe's role, experience, and the rates awarded to experts of similar experience, we award rates of \$180/hour and \$190/hour for his work performed in 1999 and 2000, respectively.

#### **5.1.1.2. Sage, Cynthia**

KRHA seeks an hourly rate of \$180 for work performed by expert Cynthia Sage of Sage Associates in 2000 and 2001.



\$180/hour is the rate Ms. Sage charged to KRHA and her billing rate during 2000 and 2001 to business clients. Ms. Sage specializes in environmental planning and impact assessment. Her testimony and time focused on these factors as well as cost issues. Ms. Sage holds a 1969 B.A. in Zoology, with a Chemistry minor and a 1972 M.A. in Environmental Geology, both from the University of California, Santa Barbara. She has extensive experience on transmission siting issues and has served in various public capacities on advisory boards related to transmission issues.

Although KRHA compared Ms. Sage's consulting services to those provided by Murray, we consider them to be of a different in nature. Ms. Sage provided environmental consulting services, more in the nature of a scientist than an economist. We have previously awarded Peter Miller, a scientist with a Masters degree and 10 years of experience, a rate of \$135/hour in 1995. (See D.96-05-052.) In the same decision, we awarded David Goldstein, a physicist with a Ph.D. and close to 20 years of experience, a rate of \$175/hour in 1995. With the passage of time, we find that \$180/hour is a reasonable rate for Ms. Sage's services in this proceeding given the nature of her work, market rates, and the rates awarded to other experts appearing before the Commission.

#### **5.1.1.3. Sage, Orrin**

KRHA seeks an hourly rate of \$180 for the work of Orrin Sage of Sage Associates during 2001. Dr. Sage holds a 1969 B.A. and 1971 M.A. in Geological Sciences, and a 1973 Ph.D. in Environmental Geology and Sedimentology, all from the University of California, Santa Barbara. In this proceeding, Dr. Sage focused on geology-related routing issues. For similar reasons discussed in setting a rate for Ms. Sage, we agree that a 2001 rate of

\$180/hour for Dr. Sage represents a reasonable rate of compensation for his services.

#### **5.1.1.4. Confidential Expert**

In its Request, KRHA provided no information about its confidential expert except for a requested hourly rate. In its Reply to PG&E's Opposition, KRHA includes a declaration by O'Neill discussing the confidential expert's experience. KRHA provides no information about the confidential expert's educational background or years of experience to allow us to assess an appropriate hourly rate. Therefore, we set no hourly rate for this expert.

#### **5.1.2. Paralegals**

As a general matter, KRHA argues that the paralegals it employed in this case are highly experienced and should be compensated at higher rates than typically awarded to paralegals for whom rates have previously been set at the Commission. KRHA seeks a rate of \$130/hour for Judy Pau, Marjorie Oxsen, and Barbara L. Nielsen in 2001 and a rate of \$120/hour for Pau and Oxsen in 2000. KRHA presents data from *Of Counsel* to identify market rates for paralegals.<sup>8</sup>

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<sup>8</sup> KRHA identifies an average low-end paralegal rate of \$113/hour and an average high-end rate of \$143/hour. Utilizing the data supplied by KRHA in its claim, we are unable to recreate these averages. We derive an average low-end rate of \$90/hour and an average high-end rate of between \$165/hour and \$170/hour, depending on how the outlier rates are defined. Although we were not able to exactly derive the average rates identified by KRHA for partners and associates, we were able to derive averages quite close to those calculated by KRHA for partners and associates and thus we relied on KRHA's estimates with confidence. For paralegals, we will rely on the figures we have calculated. Our calculations result in the following ranges for entry-level, mid-level, and senior paralegals respectively: \$90-\$114; \$115-\$140; and \$140-\$165.

Pau performed work during 2000 and 2001 for KRHA. Pau has been working as a paralegal for nine years, and holds a 1988 B.A. from the University of California, Berkeley and a 1992 M.B.A. from California State University, Fresno. Oxsen performed work during 2000 and 2001 for KRHA. Oxsen holds a 1972 B.A. from the University of San Francisco, a 1973 teaching credential from California State University, Hayward, and a 1991 Paralegal Certificate from St. Mary's College, and has been a paralegal for ten years. Nielsen performed work in 2001 for this proceeding, holds a 1974 A.B. from the University of California, Berkeley, a 1981 Certificate from University of California Management Institute, and a 1993 J.D. from Northeastern University School of Law, Boston, and has worked as a paralegal/legal assistant for 21 years.

KRHA argues that when the Commission set a 1999 paralegal rate at \$75/hour in D.00-04-011, it was reviewing a recent college graduate with little regulatory experience. KRHA argues that Pau, Oxsen, and Nielsen are much more experienced paralegals, especially with regulatory matters, and therefore should command a higher rate.

We agree that all three KRHA paralegals have more experience than those for whom we have established a \$75/hour rate. Pau and Oxsen, with nine and 10 years of paralegal experience respectively, should command a rate in the lower-end of the mid-level range. Nielsen, with additional experience and a law school degree, should be higher in that same range. Based on the data presented by KRHA from *Of Counsel*, and the experience level of these particular paralegals, we establish 2000 and 2001 rates for Pau and Oxsen at \$115/hour, and a 2001 rate for Nielsen of \$125/hour.

## **5.2. Hours Claimed**

KRHA's compensation request includes detailed time records for attorneys O'Neill, Hilen, Beeson, and Bober, paralegals Pau, Oxsen, and Nielsen, and expert Boothe that span the timeframe of this proceeding and describe the activities of each, the date and the number of hours expended. The February 7, 2002 letter clarifies certain claimed hours and provides time records for experts C. Sage and O. Sage. No such records were provided for the "Confidential Expert." In addition, the February 7, 2002 augmentation and KRHA's Reply to PG&E's Response identify hours for certain witnesses and attorneys that should have been charged at half the hourly rate because they were associated with travel or intervenor compensation work. We will address the hours claimed for each attorney, expert, and paralegal in turn.

### **5.2.0. O'Neill**

For O'Neill, KRHA requested compensation for 18.2 hours in 2000 and 363.2 hours in 2001. O'Neill's records show 15.5 professional hours for 2000 and 385.8 professional hours for 2001.

We have reduced O'Neill's hours claimed, first, by removing time associated with travel and intervenor compensation that was identified in his time records, but recorded as professional hours as follows: 1/5/01 (1.0 hour travel); 8/23/01 (0.3 hour intervenor compensation); and 8/24/01 (1.0 hour travel). Next we remove time associated with meetings with public officials, consistent with D.96-06-029 (66 CPUC2d 351, 359), on 2/14/01 (2.5 hours).

O'Neill's records describe the general work O'Neill focused on in a given day, but do not allocate time to particular issues or tasks. Rather than attempt to guess how each day's work should be allocated, we rely on the

percentage of time devoted to each issue (derived from Table 2 of KRHA's Request) to allocate O'Neill's time to issues.<sup>9</sup> This approach results in 4.0 hours allocated to routing in 2000 and 98.7 hours in 2001, 2.6 hours allocated to construction and land costs in 2000 and 64.5 hours in 2001, and 0.8 hours allocated to visual impacts in 2000 and 18.5 hours in 2001.<sup>10</sup> Consistent with Section 4 above, we remove 1.0 hours associated with routing ( $4.0 \times 0.25$ ) in 2000 and 24.7 hours ( $98.7 \times 0.25$ ) in 2001, 1.3 hours associated with construction and land costs ( $2.6 \times 0.5$ ) in 2000 and 32.3 hours ( $64.5 \times 0.5$ ) in 2001, and 0.4 hours associated with visual impacts ( $0.8 \times 0.5$ ) in 2000 and 9.3 hours (18.5) in 2001. Finally, we reduce O'Neill's 2001 hours by 5.0 hours to remove hours associated with unproductive effort on issues related to project need. Thus, we compensate 12.8 professional hours in 2000 for O'Neill and 309.8 professional hours in 2001.

KRHA requested 2.2 hours and 40.2 hours for O'Neill's time spent on intervenor compensation matters and travel in 2000 and 2001 respectively. O'Neill's travel time requested in 2000 matches his records, is reasonable and should be approved at half his professional rate. In 2001, O'Neill's records reflect 16.1 hours billed for travel and 20.5 hours billed for intervenor compensation related work. Because of numerous documentation problems associated with KRHA's compensation request, we reduce O'Neill's

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<sup>9</sup> Table 2 identified 2,392.3 hours claimed, broken down by issues. To calculate the percentage of time allocated to each issue, we divide the hours claimed by issue by the total hours claimed. For example, Routing of Transmission Line and Alternatives  $(619.5) / \text{Total } (2,392.3) = 25.896\%$ .

<sup>10</sup> We focus only on hours allocated to routing, construction and land costs, and visual impacts because these are the hours for which we found there to be duplication with the City of Pleasanton, unproductive effort related to the "Improved Isabel-Stanley" route, and excessive compared to the contribution.

award by 5.0 hours, approximately 25%.<sup>11</sup> Adding the 2.3 hours, those removed from O'Neill's professional hours because they related to travel and intervenor compensation, results in 33.9 hours subject to compensation. We award compensation for 33.9 hours for O'Neill in 2001 at half his professional rate.

#### **5.2.1. Hilén**

KRHA requested compensation for 20 hours, 455 hours, and 526.9 hours of professional time for Hilén in 1999, 2000, and 2001 respectively. PG&E argues that none of Hilén's time after December 15, 2000 should be allowed because KRHA changed lead counsel at that time. We disagree that such limits should be placed on intervenor's right to counsel although we do caution that every effort should be made by intervenors to be as efficient as possible in all intervention efforts. Therefore, we evaluate Hilén's hours claimed on their merits.

The hours requested for Hilén in 1999 match his records for that year. Hilén's records identify 492.5 hours of professional time for 2000 and 552.75 hours for 2001. We have reduced Hilén's hours by removing time associated with press and media contacts and letter and contacts with public officials. We note that most of Hilén's time associated with these activities was properly excluded from the hours requested by KRHA, consistent with the directives in D.94-11-055 (57 CPUC2d 347, 353) and D.96-06-029 (66 CPUC2d 351, 359-360). However, time associated with these activities was charged on 3/29/00, 6/5/00, 6/6/00, 9/25/00, 9/28/00, 11/9/00, and 4/6/01. We have

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<sup>11</sup> KRHA identifies 201.6 hours in its records for intervenor compensation related activities. Given the serious problems with documentation of the claim and allocation of hours to issues, this figure is excessive. We apply an adjustment of approximately 25% to the attorney and expert hours allocated to this effort.

reduced Hilen's professional hours in 2000 by 12.0 hours and 2.0 hours in 2001 to reflect these errors. Hilen also neglected to separate travel time associated with his attendance at the evidentiary hearings in February 2001; we reduce his 2001 professional hours by 13.0 hours to reflect this error.

KRHA did not allocate Hilen's time to specific issues with any consistency. For example, Hilen's 2000 records reflect time assigned to Environmental Review (7.75 hours), health and safety (4.75 hours), alternative routes (19.0 hours) as well as to various tasks. We can allocate to different issues the time associated with certain tasks, for example "Application," "Discovery," "Commissioner," and "Testimony," utilizing the percentages set forth in KRHA's February 7, 2002 augmentation, but many hours remain unallocated using this approach. Therefore, we rely on KRHA's Allocation of Work Tasks by Issues whenever possible. When this approach is not possible, we make a pro rata allocation based on the percentage of hours allocated to each issue in KRHA's Table 2. (See KRHA Request, pp. 22-23.)

In 1999, all of Hilen's time is associated with analyzing PG&E's application. Thus 2.0 hours are allocated to community values, 2.0 hours to construction costs, 6.0 hours to health and safety, and 10.0 hours to routing. Consistent with Section 4 above, Hilen's 1999 hours should be reduced by 1.0 hour for construction costs and 2.5 hours on routing, resulting in 16.5 compensable professional hours in 1999.

In 2000, Hilen shows 30 hours associated with application analysis, 38 hours for discovery, 10.75 hours for meetings with Commissioners, and 8.0 hours for testimony. In conjunction with time allocated to specific issues in Hilen's records, there are 118.25 hours in 2000 that can be allocated to specific issue areas. Of these, 54.27 hours are allocated to routing, 9.9 hours are allocated to construction and land costs, and 0.4 hours to visual impacts. The remaining

hours (362.25) are assigned to issues based on the percentages derived from Table 2 in KRHA's Request, so an additional 93.81 hours are allocated to routing, 61.36 hours to construction and land costs, and 17.59 hours to visual impacts. Consistent with Section 4 above, this results in a reduction of 37.0 hours associated with routing  $((54.27+93.81)*0.25)$ , 35.6 hours associated with construction and land costs  $((9.9+61.36)*0.50)$ , and 9.0 hours associated with visual impacts  $((0.4+17.59)*0.50)$ . Therefore, we compensate Hilen in 2000 for 398.9 hours at his professional rate.

In 2001, Hilen's time is allocated to Environmental Review (6.0 hours), costs (18.0 hours), and alternative routes (1.0 hours), and to "Opening Brief" (98.5 hours), "Reply Brief" (43.0 hours), and "PD" (12.25 hours), resulting in 178.75 hours that can be allocated to specific issues or tasks. Of these, 32.16 hours are associated with routing, 46.78 hours are associated with construction and land costs, and 14.93 are associated with visual impacts. We will assign the remaining hours (354.0) to issues based on the percentages derived from KRHA's Table 2. Therefore, an additional 91.67 hours are allocated to routing, 59.96 hours to construction and land costs, and 17.19 to visual impacts. Consistent with Section 4 above, this results in a reduction of 30.96 hours associated with routing  $((32.16+91.67)*0.25)$ , 53.37 hours associated with construction and land costs  $((46.78+59.96)*0.50)$ , and 16.2 hours associated with visual impacts  $((14.93+17.19)*0.50)$ . We also reduce Hilen's 2001 professional hours by 5.0 hours associated with unproductive effort on issues related to project need. As a result, we compensate Hilen in 2001 for 431.5 hours at his professional rate.

KRHA requested compensation for 1.0 hour, 29.0 hours, and 32.5 hours of Hilen's time associated with travel and intervenor compensation in 1999, 2000, and 2001, respectively. We reduce Hilen's 2000 hours by 4.0 hours



and 2001 hours by 7.5 hours to account for documentation problems in the compensation request, bringing the 2000 total to 25.0 hours. We also increase the travel hours for 2001 by 13.0 hours to reflect their reclassification from professional hours, bringing the 2001 total to 38.0 hours. These hours are reasonable and we compensate for all them at half of Hilen's professional rate.

#### **5.2.2. Bober**

KRHA requested compensation for 17.7 hours of Bober's time in 2000, all related to EMF issues. EMF issues have generally been classified as health and safety issues in KRHA's time entries, thus we will not reduce Bober's time for duplication or unproductive effort. This time is reasonable and will be compensated at Bober's professional rate.

#### **5.2.3. Beeson**

KRHA requested compensation for 12.9 hours and 426.0 hours of professional time for Beeson in 2000 and 2001 respectively. Beeson's records show 13.0 professional hours for 2000 and 444.9 professional hours for 2001. The records describe the tasks or issues Beeson focused on in a given day, but do not allocate time with the particularity that Hilen did. Therefore, we rely on the percentages by issue, derived from Table 2 of KRHA's Request, to allocate Beeson's time to issues, so that 3.37 hours are allocated to routing in 2000 and 115.21 hours in 2001, 2.2 hours are allocated to construction and land costs in 2000 and 75.36 hours in 2001, and 0.6 hours are allocated to visual impacts in 2000 and 21.6 hours in 2001. Overall, and consistent with Section 4 above, we reduce Beeson's hours by 0.84 hours associated with routing ( $3.37 \times 0.25$ ) in 2000 and 28.80 hours ( $115.21 \times 0.25$ ) in 2001, by 1.10 hours associated with construction and land costs ( $2.20 \times 0.5$ ) in 2000 and 37.68 hours ( $75.36 \times 0.5$ ) in 2001, and by 0.3 hours associated with visual impacts ( $0.6 \times 0.5$ ) in 2000 and 10.8 hours ( $21.6 \times 0.5$ ) in

2001. In addition, we reduce Beeson's 2001 hours by 5.0 hours to remove hours associated with unproductive effort on issues related to project need. Thus we award compensation to Beeson for 10.7 professional hours in 2000 and 362.6 professional hours in 2001.

KRHA seeks 108.0 hours for Beeson for preparing the intervenor compensation claim in 2001. This number of hours is quite high for this purpose. Given the duration of the proceeding, the number of issues addressed, the number of advocates for KRHA, and the need for coordination of the records of all involved, we believe that the time expended by Beeson could be reasonable for a fully documented claim. However, we are concerned that despite the amount of time expended, the assigned ALJ needed to request additional documentation to analyze the claim, and the claim did not allocate each advocate's hours by issue. These deficiencies lead us to reduce the hours awarded by 30 hours. We will award compensation for 78 hours related to intervenor compensation work at half of Beeson's 2001 professional rate.

#### **5.2.4. Boothe**

KRHA originally requested compensation for 19.5 hours of Boothe's time in 1999 and 58.6 hours in 2000. Boothe's time records reflect 19.5 hours in 1999 and 64.3 hours in 2000. In KRHA's 1/23/02 Reply, KRHA states that 19.0 hours in 2000 should be charged at half the hourly rate because it relates to intervenor compensation work. PG&E argues that none of Boothe's time should be allowed because he did not appear as a witness during the evidentiary hearing. We disagree that appearance at hearing is necessarily a requirement for compensation. We will evaluate Boothe's hours on their merits.

Boothe's 1999 hours were almost entirely dedicated to analyzing PG&E's application. KRHA's February 7, 2002 augmentation allocated

10% of these hours to community values, 10% to construction costs, 30% to health and safety, and 50% to routing. Accordingly, Boothe's 1999 time should be reduced by 1.0 hours for construction costs and 2.4 hours for routing, consistent with Section 4 above, resulting in 16.1 compensable hours in 1999.

We reduce Boothe's 2000 hours by 2.5 hours to remove time associated with lobbying public officials (10/09/00) which should not have been charged to ratepayers, consistent with D.96-06-029. KRHA did not allocate Boothe's time to specific issues as it did for Ms. Sage and Dr. Sage, therefore we look to Boothe's records. For 2000, Boothe assigns 15.0 hours to health and safety issues and 3.0 hours to community values. Based on the topics in the remainder of the records, and KRHA's allocation of consultant time in Table 2 of the Request, the remainder of Boothe's time is allocated to routing. Therefore, consistent with Section 4 above, we reduce Boothe's hours associated with routing by 6.2 hours, resulting in an award of compensation for 36.6 hours in 2000 at Boothe's professional rate. We also award compensation for 14.0 hours at half Boothe's hourly rate for intervenor compensation related time, a reduction of 5.0 hours from the hours requested because of KRHA's documentation problems in their compensation request.

#### **5.2.5. Sage, C.**

KRHA originally requested compensation for 211 hours of Ms. Sage's time. Her records reflect 214 hours. (See 12/14/01 Errata.) KRHA's February 7, 2002 augmentation, p. 7, indicates that 15 hours billed by Sage Associates should have been identified as travel time.<sup>12</sup> KRHA states that

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<sup>12</sup> The letter did not indicate whether the travel was by Ms. Sage or Dr. Sage. Because both traveled to present their testimony and be cross-examined, we allocate the time equally, 7.5 hours to each expert.

Ms. Sage's time was allocated 20% to constructability, 5% to construction costs, 10% to health and safety, 25% to land costs, 30% to routing of transmission line alternatives, and 15% to visual impacts.<sup>13</sup> After removing 7.5 hours for travel, the adjusted allocation means that Ms. Sage spent 41.3 hours on constructability, 10.325 hours on construction costs, 20.65 hours on health and safety, 51.625 hours on land costs, 61.95 hours on routing, and 20.65 hours on visual impacts. Consistent with Section 4 above, we will reduce the hours allowed by 31.0 hours associated with construction and land costs and 15.5 hours associated with routing, and 10.3 hours associated with visual impacts. Accordingly, we award compensation for 149.7 hours of Ms. Sage's time at her professional rate.

#### **5.2.6. Sage, O.**

KRHA originally requested compensation for 39.6 hours of Dr. Sage's time. His records reflect 42.5 hours (see 12/14/01 Errata), of which 7.5 hours should be allocated to travel time and charged at half of his professional rate. KRHA states that Dr. Sage's time was allocated 40% to constructability, 40% to construction impacts, and 20% to routing. This allocation means that Dr. Sage spent 14 hours on constructability, 14 hours on construction impacts, and seven hours on routing. Consistent with Section 4 above, we will reduce the hours allowed by 1.8 hours associated with routing. Accordingly, we award compensation for 33.3 hours of Dr. Sage's time at his professional rate.

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<sup>13</sup> These percentages sum to 105%. After reviewing Ms. Sage's testimony, we have adjusted the percentages allocated to visual impacts to 10%.

**5.2.7. “Confidential Expert”**

In its original request, KRHA did not provide any justification or time records for its confidential expert. In response to PG&E’s opposition to this part of its request, KRHA stated that it retained an experienced expert to assist it in preparing for litigation. Based on the December 14, 2001 Errata, it appears that the confidential expert was retained by Sage Associates. We note that in the time records for Beeson, included in the original request, she states: “Cindy Sage of Sage and Associates originally spoke with another expert consultant who wanted to remain confidential and therefore Sage and Associates did not use any of the information that the expert provided.” Therefore, we cannot conclude that the time spent by KRHA’s confidential expert made a substantial contribution to D.01-10-029 and we deny compensation for this time.

**5.2.8. Paralegals**

KRHA claims 1.0 hour in 2000 and 10.8 hours in 2001 for Oxsen; 2.7 hours in 2000 and 28.1 hours in 2001 for Pau; and 48.6 hours in 2001 for Nielsen. KRHA also claims 6.8 hours for Pau and 1.3 hours for Nielsen in 2001 related to preparing the compensation request. We have reviewed the time records for these activities, find the hours to be reasonable, and award compensation for all hours requested.

**5.3. Other Costs**

KRHA seeks \$34,727.28 in other costs, which represent 5.4% of KRHA's total request. The request identifies a total amount for copying, legal research, legal services, court reporting, delivery, telecommunications, travel, and parking, but does not itemize the elements that make up these costs or when the costs were incurred.

KRHA states that vehicle mileage costs are calculated at 30 cents per mile, and actual costs for taxicab, public transit, airfare, and hotel expenses are included. KRHA states that copying costs are actual costs at commercial copy shops or charged at 15 cents per page, which it says is a reasonable proxy for commercial rates. Postage and overnight delivery charges are actual costs. Fax charges are \$0.50 per page, which KRHA states is a reasonable proxy for commercial rates. (See generally, KRHA's Request at 20-21.)

Below is a table identifying KRHA's expenses.

Copying	In house	\$ 5,670.55	
	Outside	\$12,752.93	
	Subtotal		\$18,423.48
Research	Lexis-Nexis	\$ 3,489.57	
	Westlaw	\$ 1,308.79	
	Subtotal		\$ 4,798.36
Legal Services			\$ 2,873.80
Court Reporting			\$ 2,038.00
Delivery	Messenger	\$ 831.86	
	FedEx	\$ 588.35	
	Subtotal		\$ 1,420.21
Telecommunications	Phone	\$ 2,813.13	
	Conferencing	\$ 360.96	
	Fax	\$ 576.50	
	Subtotal		\$ 3,750.59
Travel			\$ 1,348.84
Parking			\$ 74.00
	Subtotal		\$34,727.28

### 5.3.0. Copying Costs

KRHA claims \$5,670.55 for in house copying associated with this case. At \$0.15/page, this cost translates into over 37,800 pages of copies. KRHA also claims \$12,752.93 for outside copying costs. At a cost of \$0.15/page (the rate KRHA claims is a reasonable proxy for outside commercial copy costs), this cost translates into an additional 85,000 copies, bringing the total number of copies produced by KRHA alone to over 122,800 pages. This figure seems high given that the service list was limited to only 17 appearances and 6 state service addresses on which hard copy service was required.

A review of the documents filed in this proceeding shows that KRHA filed 25 pleadings with the Docket Office (including ex parte notices), in addition to the testimony it served. With very few exceptions, the documents filed or served were jointly sponsored with the City of Pleasanton, who

presumably bore some responsibility for copying costs during their joint participation. Assuming KRHA was responsible for 35 documents (more than the number filed with the Docket Office) that required 35 copies each (to account for filing with the Docket Office and copies for KRHA's files—a high estimate given that some documents were only provided to parties in the hearing room), and averaged 50 pages in length (a very high estimate given the different types of documents filed), it would have produced 61,250 copies. At a cost of \$0.15/page, 61,250 copies would result in a cost of \$9,187.50. We find this copying cost is reasonable given the scope and breadth of the case, KRHA's joint participation with the City of Pleasanton, and the numbers and types of filing made by KRHA.

#### **5.3.1. Legal Research**

We customarily allow intervenors to recover the costs associated with online research. Here KRHA requests \$1,308.79 for Westlaw research and \$3,489.57 for Lexis-Nexis research, for a total of \$4,798.36 in legal research costs. KRHA provides a monthly breakdown of these research costs but does not identify the subjects being researched. We are troubled by the size of this claim because the legal research costs claimed in proceedings has typically been less than \$1,000. (See for example, D.00-09-068, TURN's claim in PG&E's GRC of \$53.88 for legal research costs.) This case did not raise any particularly novel legal issues due to the very factual nature of the transmission line routing question. In addition, we would normally expect most legal research costs to be incurred during the time that parties were preparing testimony or briefs, but in KRHA's summary of costs, a significant portion of the costs are incurred early in the proceeding. Without better documentation of these costs, we will allow only



those legal research costs incurred beginning in December 2000 through the duration of the proceeding, a total of \$1,840.71.

### **5.3.2. Legal Services**

KRHA requests \$2,873.80 for Legal Services in May, July, and August 2001. KRHA provided no invoices, documentation, or description of the services provided under the category of “Legal Services.” It is unclear what additional legal services were required beyond the four attorneys, four experts, and three paralegals employed by KRHA during the course of the proceeding. Because KRHA has not met its burden to justify this expense, we do not allow it.

### **5.3.3. Court Reporting**

KRHA provided no invoices, documentation, or description of the services provided under the category of “Court Reporting.” It is possible that this expense is appropriate but because no justification or documentation is provided, we do not allow it.<sup>14</sup>

### **5.3.4. Delivery**

KRHA requests \$831.86 in messenger costs and an additional \$588.35 in Federal Express/Air Express costs, for a total of \$1,420.21 in delivery costs. Again, no invoices or documentation of the services was provided. We note that as part of the December 14, 2001 errata to KRHA’s claim, some documentation of delivery costs incurred by KRHA’s consultants was provided,

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<sup>14</sup> In KRHA’s original claim, these costs were identified as occurring in April 2000. In the errata, these costs are identified for April 2001. Because no documentation was provided for these costs, it is unclear whether the expense relates to transcript costs or outside court reporting. It is Commission practice to provide transcripts free of charge to intervenors who have been deemed eligible to claim compensation under Section 1801 et seq.

but the services documented do not match with any of the costs claimed by KRHA in its summary of direct costs. Because of less expensive and faster delivery methods (fax or e-mail), these services are rarely appropriate. We will allow \$123.88 in Federal Express costs that were documented by KRHA's consultants, although we note that some of the costs were to deliver documents to other parties in the case, specifically, the City of Pleasanton and the Foley Intervenors. Because the City of Pleasanton was a joint sponsor of testimony with KRHA, we expect that the City of Pleasanton bore some of the costs of participation, along with KRHA, associated with direct expenses, like the delivery costs addressed here. Only \$123.88 of delivery costs have been sufficiently documented of the claim and will be approved.

#### **5.3.5. Telecommunications**

KRHA divides its telecommunications costs into phone/long distance (\$2,813.13), conferencing services (\$360.96), and facsimile (\$576.50) for a total of \$3,750.59. KRHA states that facsimile costs are calculated assuming \$0.50/page in costs. KRHA does not provide any invoices or documentation for any of the costs associated with telecommunications services, with one exception. In its December 14, 2001 errata, KRHA provides documentation for its consultant for \$246.43 in telecommunications costs for February 2001. Unfortunately, once again, these costs do not match with the summary of costs provided by KRHA. We note that the documentation provided by KRHA's consultant breaks down calls into various area codes and allocates all calls to area codes 415, 510, 925, and 315 to KRHA. Although we agree that the costs for calls to area codes 415, 510, and 925 (all Bay Area-area codes) are likely related to this project, we fail to see how calls to New York area code 315 relate to this project, absent additional

documentation. \$108.73 in phone and conferencing costs have been adequately justified.

Regarding facsimile costs, we note that KRHA would have faxed 1,153 pages over the course of the proceeding, relying on the \$0.50/page rate set forth in the claim. Given that all the parties in the proceeding had internet access, these costs seem excessive. Assuming 20 months of participation (January 2000 through August 2001), a rate of \$0.50/page, and 20 pages of faxes each month (a rate higher than KRHA identified in most months), results in a total cost for facsimile charges of \$200. This is a reasonable allowance for these costs, given the duration of the proceeding and the lower cost, alternative means of sharing documents between remotely located participants. Therefore, we will allow \$308.73 in telecommunications costs, those sufficiently justified and documented by KRHA and a reasonable estimate of facsimile costs.

#### **5.3.6. Travel**

KRHA claims \$1,348.84 in travel costs. With the exception of costs incurred by KRHA consultants Cynthia Sage and Orrin Sage, KRHA does not document travel costs or provide receipts. We are left to review KRHA's timesheets and attempt to match the monthly travel cost summary to work described therein. In April 2000, the first month for which travel costs are claimed, only attorney Hilen and consultant Boothe were recording time related to representation of KRHA. Based on KRHA's timesheets for its attorney and expert, no travel-related time was incurred in April 2000, therefore we do not allow any of the costs claimed for April 2000. In May 2000, KRHA's timesheets indicate several activities which required travel to the project area, most likely by private vehicle. Utilizing the \$0.30/mile rate specified by KRHA and the travel distance, the costs claimed in May 2000 are reasonable. KRHA identifies \$73.45

and \$62.00 in travel costs for July and August 2000 respectively. Like April 2000, KRHA's attorney and expert recorded no travel-related time in July or August 2000, therefore we do not allow any of the costs claimed for July or August 2000.

During February and March 2001, the Commission conducted public participation and evidentiary hearings. The time records of KRHA's representatives document travel-related activities during these months. In addition, KRHA submitted receipts for \$1,144.76 worth of travel costs for consultants Cynthia Sage and Orrin Sage during that time period. The costs for which KRHA seeks recovery in the February and March 2001 time period only equal \$1,013.04. Despite this discrepancy, we will allow the full \$1,144.76 in travel costs for this time period.

In April 2001, no travel-related time was recorded by KRHA's attorneys or experts, therefore we do not allow any of the costs claimed for April 2001. During May 2001 and August 2001, KRHA claims \$35.75 and \$9.00 respectively. The time records of KRHA's representatives document travel-related activities during these months and we will allow these costs. The total travel-related costs allowed are \$1,224.11.

#### **5.3.7. Parking**

KRHA submitted receipts documenting the \$74.00 claimed for parking. These expenses are reasonable and we approve them.

#### **5.3.8. Summary**

We find the following expenses reasonable.

Copying	\$ 9,187.50
Legal Research	\$ 1,840.71
Legal Services	Not supported
Court Reporting	Not Supported
Delivery	\$ 123.88
Telecommunications	\$ 308.73

Travel	\$ 1,224.11
Parking	\$ 74.00
Total	\$12,758.93

**6. Award**

KRHA is awarded \$522,923.68 as calculated below.

<b>Attorneys</b>	<b>year</b>	<b>rate</b>	<b>Hours</b>	<b>total</b>
O'Neill	2000	\$ 295.00	12.8	\$ 3,776.00
O'Neill	2001	\$ 315.00	309.8	\$ 97,587.00
Hilen	1999	\$ 275.00	16.0	\$ 4,400.00
Hilen	2000	\$ 275.00	398.9	\$ 109,697.50
Hilen	2001	\$ 285.00	431.5	\$ 122,977.50
Beeson	2000	\$ 175.00	10.7	\$ 1,872.50
Beeson	2001	\$ 175.00	362.6	\$ 63,455.00
Bober	2000	\$ 210.00	17.70	\$ 3,717.00
Subtotal				\$ 407,482.50

**Attorney Compensation Request/Travel Time**

O'Neill	2000	\$ 147.50	2.2	\$ 324.50
O'Neill	2001	\$ 157.50	33.9	\$ 5,339.25
Hilen	1999	\$ 137.50	1.0	\$ 137.50
Hilen	2000	\$ 137.50	25.0	\$ 3,437.50
Hilen	2001	\$ 142.50	38.05	\$ 5,415.00
Beeson	2001	\$ 87.50	78.0	\$ 6,825.00
Subtotal				\$ 21,478.75
Attorney Time subtotal				\$ 428,961.25

<b>Paralegals</b>	<b>year</b>	<b>rate</b>	<b>hours</b>	<b>Total</b>
Pau	2000	\$ 115.00	2.7	\$ 310.50
Pau	2001	\$ 115.00	28.1	\$ 3,231.50
Oxsen	2000	\$ 115.00	1.0	\$ 115.00
Oxsen	2001	\$ 115.00	10.8	\$ 1,242.00
Nielsen	2001	\$ 125.00	46.8	\$ 5,850.00
subtotal				\$ 10,749.00

**Paralegal Compensation Request/Travel Time**

Pau	2001	\$ 57.50	6.8	\$ 391.00
Nielsen	2001	\$ 62.50	1.3	\$ 81.25
subtotal				\$ 472.25
Paralegal Time subtotal				\$ 11,221.25
Attorney/Paralegal time				\$ 452,831.30

<b>Experts</b>	<b>year</b>	<b>rate</b>	<b>hours</b>	<b>Total</b>
Sage, C	2000, 2001	\$ 180.00	149.7	\$ 26,946.00
Sage, O	2000, 2001	\$ 180.00	33.3	\$ 5,994.00
Boothe	1999	\$ 200.00	16.1	\$ 2,898.00
Boothe	2000	\$ 220.00	36.6	\$ 6,954.00
subtotal				\$ 42,792.00
<b>Expert Compensation Request/Travel Time</b>				
Sage, C	2000, 2001	\$ 90.00	7.5	\$ 675.00
Sage, O	2000, 2001	\$ 90.00	7.5	\$ 675.00
Boothe	2000	\$ 95.00	14.0	\$ 1,330.00
subtotal				\$ 2,680.00
Expert time				\$ 47,322.40
Direct Expenses				\$ 12,758.93
Total				\$ 498,413.43

We award KRHA \$498,413.43, calculated as described above. As the applicant, PG&E is responsible for payment of the award.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing February 27, 2002 (the 75<sup>th</sup> day after KRHA submitted the errata to its compensation request), and continuing until PG&E makes full payment of the award.

As in all intervenor compensation decisions, we put KRHA on notice that Commission staff may audit its records related to this award. Thus, it must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Its records should identify specific issues for which compensation is requested, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

## **7. Comments on Draft Decision**

Pursuant to Rule 77.7(f)(6), the public review and comment could be waived, however, the draft decision of ALJ Cooke was issued for comment. Comments were filed on \_\_\_\_\_.

### **Findings of Fact**

1. KRHA made a timely request for compensation for its contribution to D.01-10-029.
2. KRHA made a showing of significant financial hardship in its NOI.
3. KRHA contributed substantially to D.01-10-029.
4. Except as noted in the Opinion, KRHA maintained a detailed summary of time spent by its advocates in this proceeding.
5. With adjustments to account for duplication, unproductive effort, and errors, the professional hours identified for compensation herein are reasonable.
6. KRHA's time spent on travel and intervenor compensation activities, with the exception of 30 hours by Beeson, are reasonable.
7. The hourly rates for KRHA's advocates, as modified above, are consistent with the market rates for individuals with comparable training or experience.
8. The miscellaneous costs incurred by KRHA, as modified above, are reasonable.

### **Conclusions of Law**

1. Except as noted in the foregoing Opinion and in these Findings and Conclusions, KRHA has fulfilled the requirements of Sections 1801-1812, which govern awards of intervenor compensation.
2. Half of KRHA's time allocated to construction and land costs should be disallowed due to duplication of effort with the City of Pleasanton.



3. Twenty-five percent of KRHA's time allocated to routing issues should be disallowed due to duplication of effort with the City of Pleasanton and unproductive effort related to the "Improved Isabel-Stanley" route.

4. No compensation should be awarded for time spent by KRHA's "Confidential Expert" because we cannot determine that this advocate made a substantial contribution.

5. Significant reductions to KRHA's miscellaneous costs are necessary because of lack of documentation and excessiveness.

6. KRHA should be awarded \$498,413.43 for its contribution to D.01-10-029.

7. This order should be effective today so that KRHA may be compensated without unnecessary delay.

## **O R D E R**

### **IT IS ORDERED** that:

1. Kottinger Ranch Homeowners Association (KRHA) is awarded \$498,413.43 in compensation for its substantial contribution to Decision 01-10-029.

2. Pacific Gas and Electric Company (PG&E) shall pay KRHA a total of \$498,413.43 within 30 days of the effective date of this order. PG&E shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning February 27, 2002, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

A.99-11-025 ALJ/MLC/hkr **ATTACHMENT**  
**Compensation Decision Summary Information**

<b>Compensation Decision(s):</b>	
<b>Contribution Decision(s):</b>	D0110029
<b>Proceeding(s):</b>	A9911025
<b>Author:</b>	Cooke
<b>Payer(s):</b>	Pacific Gas and Electric Company

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Disallowance</b>
Kottinger Ranch Homeowners Association	12/10/02	\$638,562.53	\$498,413.43	Failure to justify hourly rates, duplication, unproductive effort/excessive hours

**Witness Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Edward	O'Neill	Attorney	Kottinger Ranch Homeowners Association	\$295	2000	\$295
Edward	O'Neill	Attorney	Kottinger Ranch Homeowners Association	\$315	2001	\$315
Christopher	Hilen	Attorney	Kottinger Ranch Homeowners Association	\$275	1999	\$275
Christopher	Hilen	Attorney	Kottinger Ranch Homeowners Association	\$275	2000	\$275
Christopher	Hilen	Attorney	Kottinger Ranch Homeowners Association	\$285	2001	\$285
Mylie	Beeson	Attorney	Kottinger Ranch Homeowners Association	\$175	2000	\$175
Mylie	Beeson	Attorney	Kottinger Ranch Homeowners	\$195	2001	\$175

**A.99-11-025 ALJ/MLC/hkr ATTACHMENT**  
**Compensation Decision Summary Information**

			Association			
Leanne	Bober	Attorney	Kottinger Ranch Homeowners Association	\$210	2000	\$210
James	Boothe	Policy Expert	Kottinger Ranch Homeowners Association	\$275	1999	\$180
James	Boothe	Policy Expert	Kottinger Ranch Homeowners Association	\$275	2000	\$190
Cynthia	Sage	Scientist	Kottinger Ranch Homeowners Association	\$180	2000	\$180
Cynthia	Sage	Scientist	Kottinger Ranch Homeowners Association	\$180	2001	\$180
Orrin	Sage	Scientist	Kottinger Ranch Homeowners Association	\$180	2001	\$180
Judy	Pau	Paralegal	Kottinger Ranch Homeowners Association	\$120	2000	\$115
Judy	Pau	Paralegal	Kottinger Ranch Homeowners Association	\$130	2001	\$115
Marjorie	Oxsen	Paralegal	Kottinger Ranch Homeowners Association	\$120	2000	\$115
Marjorie	Oxsen	Paralegal	Kottinger Ranch Homeowners Association	\$130	2001	\$115
Barbara	Nielsen	Paralegal	Kottinger Ranch Homeowners Association	\$130	2001	\$125

**(END OF ATTACHMENT)**